

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

MELISSA R.

Claimant,

v.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2006050825

DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at the Eastern Los Angeles Regional Center in Alhambra, California, on July 26, 2006.

Gerard Torres, Supervisor, Consumer Services Unit, Eastern Los Angeles Regional Center (service agency or ELARC), represented the service agency.

Gloria I. (claimant's mother) represented Melissa R. (claimant).¹

The service agency and claimant offered documents and sworn testimony, and argued the case. The record was closed and the matter was submitted on July 26, 2006.

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¹ Claimant and claimant's mother are referred to by their first names and the first initials of their last names to protect their privacy.

ISSUE

The following issue is to be resolved:

Whether ELARC should reimburse claimant's mother for an additional 80 hours of in-home respite services for the period May 5-14, 2006, i.e., during the time that claimant's mother was on vacation away from home.²

EVIDENCE

1. Claimant exhibits 1 through 6.
2. Service agency exhibits A through D.
3. Testimony of Gloria I.
4. Testimony of Gerard Torres.

FACTUAL FINDINGS

The following facts were determined by a preponderance of the evidence:

1. Claimant is a 10 year-old female, born on January 9, 1996. She is a consumer of ELARC based on a diagnosis of autism. Claimant has also been diagnosed as having seizure disorder. She lives at home with her mother and four year-old brother. Gloria I. is claimant's primary caregiver.

Claimant attends Lorena Street Elementary School, Los Angeles Unified School District, where she is in the fourth grade and receives special education services that include a one-to-one aide, speech therapy, and adaptive physical education. She attends school six hours per day, five days per week.

2. Claimant's most recent Individual Program Plan (IPP) conference was held on February 3, 2006. Pursuant to the IPP, the service agency provides claimant with services that include 40 hours per week of in-home respite and 21 days per fiscal year of "in-home respite in lieu of out-of-home respite."

The Service Agency subsequently authorized an increase of in-home respite services to 46 hours per week, during the period April 2006 to January 2007.

² Based on a calculation error, the transcript of the administrative hearing indicates that an additional 180 hours of in-home respite was at issue. The correct amount is 80 additional hours.

Claimant also receives social security income (SSI) benefits from the Social Security Administration in the amount of \$760 per month, and 195 hours per month of in-home support services (IHSS), which are provided by the Los Angeles County Department of Public Social Services. IHSS is provided to claimant to help maintain her in her home. IHSS does not duplicate the in-home respite services that are provided by the Service Agency.

3. In April 2006, Gloria I. contacted Daniela Jauregui, claimant's service coordinator at the Service Agency, to ask for additional in-home respite to cover the period that she and claimant's brother would be away from home on vacation. Specifically, claimant's mother requested additional respite, at the rate of 18 hours per weekday and 24 hours per day during weekends, for the period May 5-14, 2006. The total requested increase was 204 hours.³

4. In response to the request from claimant's mother, on April 26, 2006, the Service Agency approved an additional 10 hours of respite each week day (May 5, 8, 9, 10, 11, and 12) and an additional 16 hours for each day on weekends (May 6, 7, 13, and 14). The total approved increase was 124 hours. This amount was 80 hours less than the amount requested by claimant's mother.

5. In its Notice of Proposed Action, dated May 2, 2006, the Service Agency denied claimant's mother's request and authorized in-home respite services for "10 hours per day during school days, and 16 hours per day during the weekend." The reason given was that "according to the Eastern Los Angeles Center Purchase of Service Guidelines, December 2002, the maximum hours [per] day of In-Home Respite In Lieu of Out of Home Respite is 16 hours per day."

In an undated letter that the Service Agency received on May 17, 2006, Gloria I. asked for a fair hearing to obtain the requested in-home respite hours that the Service Agency denied. This fair hearing ensued.

6. Claimant's mother is claimant's in-home respite vendor. Gloria I. employs others, including Guadalupe Mallon, to provide claimant's respite care. Claimant's mother receives \$8.57 from the Service Agency for each hour of respite care provided for claimant.

7. During May 5-14, 2006, claimant's mother took her planned vacation. During the entire period that claimant's mother and brother were away from their home,

³ Claimant's mother erred in her original request for additional in home respite. She asked for 18 hours of in-home respite for May 5, 6, 7, 8, 9 10, 11, 12 and 13, and 24 hours of in-home respite for May 7 and 14. In fact, she meant to ask for 18 hours of in-home respite for May 5, 8, 9, 10, 11, and 12 (i.e., six weekdays), and 24 hours of in-home respite for May 6, 7, 13 and 14 (two weekends). The total requested increase should have been 204 hours.

Guadalupe Mallon cared for claimant. However, rather than provide that care in claimant's own home, the respite worker brought claimant to her own home, and provided care for her at that location.

Claimant's mother wanted to have peace of mind with respect to the care that claimant would receive in her absence. Gloria I. wanted claimant to be with someone who knew her likes and dislikes, and with whom claimant was familiar. Claimant's mother was concerned that an out-of-home residential placement would be too restrictive and result in problems because claimant would become frustrated. Although claimant did remain "out-of-home" during her mother's vacation, she was with someone she knew, and who had experience providing for her care.

8. For the period covered by her vacation, Gloria I. paid Ms. Mallon for 204 hours of respite care, based on the reimbursement rate of \$8.57 per hour.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Welfare and Institutions Code section 4710 et seq.

2. Welfare and Institutions Code section 4685 states, in pertinent part:

(a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

- (1) Respect and support the decisionmaking authority of the family.
- (2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.
- (3) Recognize and build on family strengths, natural supports, and existing community resources.

[¶] . . . [¶]

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

[¶] . . . [¶]

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. When the regional center first becomes aware that a family may consider an out-of-home placement, or is in need of additional specialized services to assist in caring for the child in the home, the regional center shall meet with the family to discuss the situation and the family's current needs, solicit from the family what supports would be necessary to maintain the child in the home, and utilize creative and innovative ways of meeting the family's needs and providing adequate supports to keep the family together, if possible.

(3) To ensure that these services and supports are provided in the most cost-effective and beneficial manner, regional centers may utilize innovative service-delivery mechanisms, including, but not limited to, vouchers; alternative respite options such as foster families, vacant community facility beds, crisis child care facilities; and alternative child care options such as supplemental support to generic child care facilities and parent child care cooperatives.

3. Welfare and Institutions Code section 4690.2, subdivision (a) states, in pertinent part:

"In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member.

These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

4. Under California Code of Regulations, title 17, sections 54355, subdivision (a), and 57310 the service agency may offer vouchers to family members to allow the families to procure their own respite services, provided that the cost of services does not exceed the maximum rate of reimbursement for a family member respite vendor, which is \$8.57 per consumer, per hour, including fringe benefits.

5. The Service Agency's Purchase of Service Guidelines, dated December 2002, defines out-of-home respite as "intermittent or regularly scheduled temporary care provided outside the consumer's home by a vendored service provider." Service Agency consumers who reside with family members are eligible for consideration of out-of-home services when "family members have planned activities which preclude the participation of the consumer such as vacations" and/or when it is identified as a preferred objective in the IPP. "Families may receive up to 21 days of out-of-home respite services in each fiscal year" and "In Home Respite in Lieu of Out of Home Respite may be used when the planning team agrees that the consumer's needs may not be met in a vendored out of home respite setting."

When in-home respite in lieu of out-of-home respite is used, "the daily amount of hours (within the 21 or less days) will be calculated on individual need, not exceeding 16 hour per day." Respite hours can not be provided for the time the consumer spends in school and after school care, participates in social/recreational programs, is asleep, etc.

Based on eight hours of sleep each day, and 6 hours of school during weekdays, the Service Agency contends that the maximum in-home respite in lieu of out-of-home respite that it can reimburse claimant for is 10 hours per weekday (24 minus 6 hours for school and 8 hours sleep) and 16 hours on weekends (24 minus 8 hours sleep).

6. Claimant's mother had the option of choosing the type of respite she would use during her 21-day respite authorization. At claimant's most recent IPP, she chose in-home respite in lieu of out-of-home respite. Had claimant's mother chosen out-of-home placement, claimant would have been placed in a state-licensed residential facility where she would have received board and care on a 24-hour basis, at significantly greater cost to the Service Agency.

7. Gloria I. elected not to place claimant in either a residential facility or claimant's home for the period of her 10-day vacation. Instead, she placed claimant in the home of claimant's regular respite care provider. Claimant's mother felt that claimant would be more comfortable being with Ms. Mallon, rather than in a residential facility, where she would receive care from strangers. Obviously, claimant could not be left alone, either at home or in Ms. Mallon's residence. Claimant would need the presence of a care giver at all times, including when she was asleep. However, unlike a residential facility which provides 24-hour supervision, Ms. Mallon did not need to provide respite services when claimant attended school. Thus, during Gloria I.'s vacation, Ms. Mallon provided 24 hours per day of respite services on weekends, and 18 hours per day on weekdays (24 minus 6 hours for school). Gloria I. paid Ms. Mallon for 204 hours of respite coverage during her vacation. The Service Agency has not reimbursed claimant's mother for the 80 hours of respite care that was over and above the 124 hours of respite care previously authorized by Service Agency (i.e., an additional eight hours per day for 10 days).

8. Given the entire record, the arrangement that claimant's mother made with Ms. Mallon was in the best interest of claimant and her family. Additionally, it resulted in

significant cost savings for the Service Agency. In balancing the purpose of Service Agency's Purchase of Service Guidelines against the interests, desires, and needs of claimant and her family, The Administrative Law Judge finds that the Service Agency should reimburse claimant's mother for the additional respite hours she paid Ms. Mallon during the period May 5-14, 2006.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

ELARC shall reimburse claimant's mother for an additional 80 hours of in-home respite in lieu of out-of-home respite services, for the period May 5-14, 2006. The 80-hour reimbursement shall be based on the Service Agency's reimbursement rate to Gloria I. as a family respite vendor (i.e., \$8.57 per hour).

This is a final administrative decision, each party shall be bound by this decision. Either party may appeal the decision to a court of competent jurisdiction with 90 days of receiving notice of the final decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)

August 1, 2006.

ROBERT S. EISMAN
Administrative Law Judge
Office of Administrative Hearings